

Chapter Ten

Dispute resolution among municipalities

While the number of intermunicipal disputes in the Manitoba Capital Region is not large, such disputes can leave a legacy of animosity and distrust between jurisdictions if they are not resolved quickly and effectively. As the 1999 Capital Regional Review Panel noted, Manitoba has no effective structure and process to permit more intermunicipal discussion and the mediation of cross-boundary disputes. Alternative dispute resolution (ADR) mechanisms are gaining popularity throughout North America as a means to resolve intermunicipal disputes over land use, service sharing, amalgamations, financial issues, and other matters. For these reasons, the RPAC is recommending that the Government of Manitoba establish a formal alternative dispute resolution mechanism for intermunicipal disputes.

INTERMUNICIPAL DISPUTES

The issue of dispute resolution arose during both the RPAC's meetings with municipal representatives and the Committee's public meetings. In general, the number of intermunicipal disputes is not large. Disagree-

ments over the actual or potential impacts that land-use decisions made in one municipality have on an adjacent municipality arise periodically, as do issues of service sharing and annexation. In most instances these issues are resolved through discussions between the municipalities affected. Prolonged disputes leading to a deterioration of relationships among neighbouring municipalities are rare, especially among the municipalities outside of Winnipeg.

Unfortunately, relations between the City of Winnipeg and its immediate neighbours have been more contentious than is desirable. Long-standing disputes have given rise to mutual misunderstanding, a lack of trust, and a lack of commitment to work together. The varied issues include the location of the city's sludge beds, access to city services, industrial activity in adjacent municipalities that impacts on city residents, and competition for commercial activity.

Given Winnipeg's size and importance to the Region, it is inevitable that the majority of the disputes that arise within the Manitoba Capital Region involve the City of Winnipeg

and the municipalities immediately adjacent to it. As the governments involved strive to achieve stronger economic growth, lower property taxes, and a higher quality of community life, tensions and irritations can arise. This reflects the dynamic and highly interactive nature of the Region. Blaming and finger pointing serve no one well. Positive policy initiatives would provide the basis for harmonious relationships and channel the inevitable conflicts in a positive direction is required for the Region to achieve the cohesion and collaboration needed to achieve enhanced economic prosperity and improved quality of life.

IMPROVING COMMUNICATION

Better communication among Capital Region governments can increase understanding and trust. Facts can be brought to the attention of the other party at an early stage before conflict escalates, emotions rise, and divisions deepen. The RPAC is making a number of recommendations elsewhere in this Report intended to improve communications among all governments involved with Capital Region matters. Principal among these recommendations is the creation of the Partnership of Manitoba Capital Region Governments.

A small, but helpful step towards better relations among governments would be the formal designation of an intergovernmental liaison person for each government and the compilation of a list of these contacts. The political leaders of municipalities are the mayors and reeves, but their busy schedules mean that they are not always available to serve as the initial and working contacts among governments. Some matters will require eventual action at the political level, but, when an intermunicipal dispute first arises, administrative officials are most likely

to be in possession of all the relevant facts. In the smaller rural municipalities the Chief Administrative Officer would be the obvious intergovernmental liaison person. Within the City of Winnipeg, it would be helpful to designate a person within the secretariat to the Chief Administrative Officer as the full-time liaison person with other governments. This individual would work closely with the Mayor’s office and with the Councillor on the Executive Policy Committee of Council designated by the Mayor as responsible for Intergovernmental Affairs.

The establishment of a single point of contact at the City of Winnipeg would reduce the concerns voiced by other regional governments that Winnipeg City Hall is both a complicated maze and unresponsive to rural municipalities. This administrative official could:

- provide a referral service to other parts of city government
- maintain continuity that would lead to knowledge of the issues and the personalities involved with intergovernmental relations in the Manitoba Capital Region
- serve as an “early warning system” for issues that are “heating up” within the Region

Ongoing dealings among officials would establish a shared factual basis and set of understandings to guide behaviour. This issue also arose in relation to communication regarding proposed changes to development plans and is discussed in Chapter Eleven of this Report. A recommendation addressing both concerns is made in Chapter Fourteen.

SETTLING DISPUTES

The RPAC does not wish to exaggerate the benefits that can flow from improved communication. There will continue to be issues where the fundamental interests of different governments will clash. In these situations, alternative dispute resolution mechanisms could prove valuable. ADR refers to any method of resolving disputes that operates as an alternative to the court system. Arbitration, (in which an agreed upon arbitrator or board of arbitration imposes a settlement) and mediation (in which a mediator works with both parties to reach an agreement) are the most common types of ADR. They offer parties to a dispute an alternative to the courts, without removing their right to engage in litigation should this become necessary.

In 2000, the Town of Niverville and the Rural Municipality of Ritchot were able to resolve an annexation issue through an alternative dispute resolution process. The annexation proposal arose when Niverville sought to annex a portion of Ritchot as a part of an expansion of local flood protection. Government of Manitoba staff worked with both municipalities through an ADR process to sort out the details of the proposal. The result was a mutually agreeable solution, with a joint application for annexation being made to the Municipal Board.

Mediation may be the most appropriate form of ADR for resolving intermunicipal disputes. In mediation, the goal is to find a mutually acceptable settlement, the content of which is the responsibility of the parties themselves. Compared to court ordered settlements, mediated settlements can be more collaborative and enduring and help to maintain an ongoing working relationship between the parties. Ideally, the mediation process:

- encourages exchanges of information
- provides new information
- helps parties to understand each other's views
- helps parties realistically assess alternatives to settlement
- encourages flexibility
- shifts focus from the past to the future
- stimulates the parties to suggest creative settlements;
- invents solutions that meet the fundamental interests of all parties
- increases public trust that solutions are being sought

THE ALBERTA MODEL

There are many examples of intermunicipal dispute settlement used in North America, but the Alberta Intermunicipal Dispute Resolution Service is unique in several respects. Not only has the Government of Alberta formalized the mediation program, it also provides financial support, a roster of experienced private sector mediators, and other support services (i.e. convening meetings) to assist municipalities in resolving their conflicts. (Details of the program can be found on the Alberta Municipal Affairs web site which can be found in Appendix 8)

Alberta Municipal Affairs works with municipalities to determine whether disputes are suitable for mediation. The department collaborates with municipalities to design specific dispute resolution training programs, (including preparation for mediation), discussions of when to use mediation, and helping to establish best practices for municipalities. The

department has a roster of qualified private sector mediators available for work and, when appropriate, it provides funding on a proportional basis to retain the private-sector mediator. This arrangement allows the province to avoid the cost of maintaining in-house mediation capacity. The impartiality of the mediation process is enhanced because the provincial government is not directly involved as the selection of the mediator is left up to the parties involved. The Alberta program facilitates the early assessment of potential dispute situations and outlines a four-step procedure that municipalities can use to resolve issues. The process may involve other stakeholders, such as developers, residents, advocacy groups, and other government agencies.

The results of the dispute resolution process are binding to the extent that all parties agree. If consensus is not achieved, municipalities can proceed to a hearing of the Municipal Board (where that option is legally available), or the courts. This appeal stage is often enhanced because the prior mediation work has better defined and narrowed the issues and differences.

The Alberta Intermunicipal Dispute Resolution website contains a number of impressive success stories. As of May 2003, the program had been involved in 29 disputes since its inception in 1998. Eighteen had been completed, three have been resolved in pre-mediation discussions. The remaining eight were ongoing. The program gives the municipalities an incentive and the support they need to resolve their differences constructively. The Government of Alberta spends approximately \$220,000 annually on the program. The provincial share of the costs of any particular mediation is determined by the number of municipal jurisdictions involved.

The RPAC recommends the adoption of the Alberta model for the Manitoba Capital Region and for the entire province. The program has proven that mediation is an efficient and effective process for resolving intermunicipal disputes in a timely fashion.

The RPAC recommends that:

- 10.1 The Government of Manitoba establish an Intermunicipal Dispute Resolution Service that is modelled upon the Alberta Intermunicipal Dispute Resolution Service.